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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

13 **JAMES POON**
429 Rickover Street
14 Vallejo, CA 94592

15 Respondent.

Case No. 3843

STATEMENT OF ISSUES

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 10, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs, received an application for Registration as an Intern Pharmacist from James Poon
23 (Respondent). On or about August 3, 2009, James Poon certified under penalty of perjury to the
24 truthfulness of all statements, answers, and representations in the application. The Board denied
25 the application on June 29, 2010.

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3. This Statement of Issues is brought before the Board of Pharmacy (Board),

4. Section 118 of the Code states:

“(a) The withdrawal of an application for a license after it has been filed with a board in department shall not, unless the board has consented in writing to such withdrawal, deprive board of its authority to institute or continue a proceeding against the applicant for the denial license upon any ground provided by law or to enter an order denying the license upon any ground.”

11

5. Section 4300, subdivision (c), of the Code states:

“(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy”

6. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is to include, but not be limited to, any of the following:

“(h) The administering to oneself, of any controlled substance, or the use of any dangerous or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to self, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the business authorized by the license.

...

“(1) The conviction of a crime substantially related to the qualifications, functions, and of a licensee under this chapter.”

1 7. Section 480 of the Code states, in pertinent part:

2 “(a) A board may deny a license regulated by this code on the grounds that the applicant
3 has one of the following:

4 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
5 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
6 provisions of Section 1203.4 of the Penal Code.

7 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
8 benefit himself or another, or substantially injure another; or

9 “(3) Done any act which if done by a licensee of the business or profession in question,
10 would be grounds for suspension or revocation of license.

11 “The board may deny a license pursuant to this subdivision only if the crime or act is
12 substantially related to the qualifications, functions or duties of the . . . [license].”

13 8. California Code of Regulations, title 16, section 1770, states:

14 “For the purpose of denial, suspension, or revocation of a personal or facility license
15 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
16 crime or act shall be considered substantially related to the qualifications, functions or duties of a
17 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
18 licensee or registrant to perform the functions authorized by his license or registration in a manner
19 consistent with the public health, safety, or welfare.”

20 FIRST CAUSE FOR DENIAL OF APPLICATION

21 (Unprofessional Conduct – Dangerous or Injurious Use of Alcohol)
22 (Bus. & Prof. Code §§ 480(a)(3), 4300(c), 4301(h))

23 9. Respondent’s application is subject to denial under Code section 480, subdivision
24 (a)(3), by reference to section 4301, subdivision (h), and under section 4300, subdivision (c), as
25 defined by section 4301, subdivision (h), in that Respondent engaged in unprofessional conduct
26 by using alcohol in a dangerous and injurious manner. The circumstances are as follows:

27 10. On or about April 30, 2006, at approximately 2:15 a.m., a California Highway Patrol
28 officer was notified of a traffic collision with injuries on U.S. Highway 101, in the Los Angeles

1 area. At approximately 2:20 a.m., the officer and his partner arrived at the scene of the accident
2 where Respondent was being treated for injuries by the Los Angeles Fire Department.
3 Respondent was standing next to the vehicle, a BMW, that was involved in the accident.
4 Respondent stated that he was the driver of the vehicle. The vehicle was facing in an easterly
5 direction on the right shoulder of the freeway. The front end of the vehicle was ripped down the
6 center into the passenger compartment. The engine block was exposed and dislodged from the
7 engine compartment, the windshield was shattered, the hood was crushed, and the entire front end
8 of the vehicle and all of its components were dislodged and smashed. The right front door of the
9 vehicle was dislodged, the right and left front windows were blown out, the rear bumper was torn
10 off, the roof was buckled, the entire left and right side of the vehicle had scrapes and dents, and
11 the front left and right tires were missing from the vehicle.

12 11. The CHP officer began to question respondent about the events leading up to the
13 crash and Respondent was evasive in his responses. Respondent claimed that he had been driving
14 in the lane farthest to the right of the four lane freeway, and that he was travelling at about 65
15 miles-per-hour at the time of the collision. The officer noted that Respondent showed signs of
16 intoxication, including red and watery eyes, a strong odor of an alcoholic beverage on his breath,
17 and slow, slurred speech. The officer asked Respondent if he had been drinking and Respondent
18 said "yes." When asked how much he had had to drink, Respondent stated "a little bit."
19 Respondent then stated that he had consumed one Heineken beer earlier in the evening. After
20 Respondent refused to answer pre-field sobriety questions, the officer asked Respondent to
21 complete a few field sobriety tests, which Respondent was unable to complete due to his level of
22 intoxication and his injuries, which he sustained in the collision. The officer admonished
23 Respondent and asked him to take a Preliminary Alcohol Screening (PAS) test, which
24 Respondent took twice. The results of the first PAS test showed that Respondent had a blood
25 alcohol content of .133 percent, and the results of the second test showed a blood alcohol content
26 of .126 percent. The officer determined that Respondent was under the influence of an alcoholic
27 beverage at the time of the collision and that he was unable to safely operate a motor vehicle.
28 Respondent was placed under arrest at 2:38 a.m. and transported to USC medical center, where

1 blood was drawn from his arm. Respondent was medically cleared from USC Medical Center at
2 approximately 8:30 a.m., on April 30, 2006. Respondent was transported to the Los Angeles
3 County Sherriff's Department Inmate Reception Center, where he was booked without incident.
4 The CHP officer determined that Respondent caused the collision by driving under the influence
5 of alcohol at an unsafe speed, which caused him to lose control of his vehicle and collide into
6 prohibitory traffic signs, causing the subsequent collisions.

7 12. Respondent had three passengers in his vehicle at the time of the collision. At least
8 two of the three passengers were transported to the emergency room following the collision. One
9 of the passengers, Warren Phan, sustained extensive injuries to his feet and ankles. Mr. Phan's
10 left foot and ankle were completely shattered, his right foot and ankle had multiple fractures, and
11 he had to undergo several operations. Mr. Phan was expected to be in the hospital for nearly one
12 month following the accident and was told by a doctor that he would need physical therapy for at
13 least one year after the collision.

14 SECOND CAUSE FOR DENIAL OF APPLICATION

15 (Conviction of Substantially Related Crime)

16 (Bus. & Prof. Code §§ 480(a)(1), 4300(c), 4301(l); Cal. Code Regs., tit. 16, § 1770)

17 13. Complainant realleges the allegations contained in paragraphs 9 through 12 above,
18 and incorporates them by reference as if fully set forth here.

19 14. Respondent's application is subject to denial under Code section 480, subdivision
20 (a)(1), and section 4300, subdivision (c), as defined by section 4301, subdivision (l), and under
21 California Code of Regulations, title 16, section 1770, in that he was convicted of a crime
22 substantially related to the qualifications, functions, and duties of a licensee. The circumstances
23 are that on or about June 25, 2007, in a case entitled *The People of the State of California v.*
24 *James Poon*, in the Los Angeles County Superior Court, Case Number BA306140, Respondent
25 was convicted by plea of nolo contendere to one count of violating California Vehicle Code
26 Section 23153, subdivision (b) (driving under the influence with a .08 percent or higher blood
27 alcohol content and proximately causing bodily injury to any person other than the driver), a
28 misdemeanor. Respondent was sentenced to three years of probation and three days in jail.

Respondent was ordered to pay various fees and fines and to enroll in and successfully complete a first-offender alcohol and other drug education and counseling program.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Dangerous or Injurious Use of Alcohol)

(Bus. & Prof. Code §§ 480(a)(3), 4300(c), 4301(h))

15. Respondent's application is subject to denial under Code section 480, subdivision (a)(3), by reference to section 4301, subdivision (h), and under section 4300, subdivision (c), as defined by section 4301, subdivision (h), in that Respondent engaged in unprofessional conduct by using alcohol in a dangerous manner. The circumstances are as follows:

16. On or about February 28, 2010, at approximately 3:15 a.m., two California CHP officers (Officer 1 and Officer 2) were travelling Northbound on U.S. Highway 101, just north of the Golden Gate Bridge. Officer 1 was riding in the passenger seat of the fully marked CHP vehicle, and Officer 2 was driving. Both officers noticed Respondent's vehicle, a black BMW, travelling ahead of their vehicle in the #2 lane. The officers conducted a speedometer pace.¹ Officer 1 determined that Respondent was travelling at a speed greater than 74 miles-per-hour in a posted 55 miles-per-hour zone. Respondent's vehicle drifted two to three feet into the #1 lane on numerous occasions during the speedometer pace, in violation of the vehicle code. Respondent also traveled onto the white delineator line between the #2 and #3 lanes multiple times, in violation of the vehicle code. Officer 2 activated the patrol vehicle's rear amber warning lights to warn other motorists of the potential hazard ahead. Officer 2 then activated the patrol vehicle's overhead emergency lights, initiating an enforcement stop of Respondent's vehicle based upon Respondent's violations of the vehicle code. Respondent's vehicle traveled for approximately one-half mile without signaling, yielding, or reacting to the overhead emergency lights. Respondent finally yielded by exiting an off-ramp off of U.S. Highway 101.

17. Once Respondent yielded to the enforcement stop, Officer 1 approached the passenger side of Respondent's vehicle, while Officer 2 approached the driver's side of the

¹A speedometer pace is when an officer follows behind a person's vehicle and uses his speedometer to estimate the vehicle's speed.

1 vehicle. Officer 1 immediately detected a strong odor of alcohol emitting from the vehicle.
2 Officer 2 explained the reason for the stop to Respondent and requested his driver's license. The
3 driver's license identified Respondent as the driver of the BMW. There was one passenger in
4 Respondent's vehicle. Officer 1 noticed that Respondent's eyes were very watery, and he
5 appeared dry-mouthed. Officer 2 asked Respondent whether he had consumed any alcohol, and
6 Respondent stated that he had not, and that he was designated driver. Officer 2 asked Respondent
7 to exit the vehicle and directed him to the right front passenger side of the vehicle.

8 18. Officer 1 asked Respondent about his day, and Respondent stated that he was coming
9 from a club in San Francisco and was on his way to Vallejo. Respondent again stated that he was
10 the designated driver, and further stated that his passenger was the one who was intoxicated.
11 Respondent told Officer 1 to give him a speeding ticket and let him go, stating that the officer was
12 wasting Respondent's time since he only had one drink that night. Officer 1 reminded
13 Respondent that he previously stated that had not consumed any alcohol. Respondent explained
14 that he had one margarita. Officer 1 asked how large the margarita was, and Respondent stated
15 that it was a very large margarita. Respondent proceeded to tell Officer 1 that he was going to
16 ruin Respondent's career. Officer 1 told Respondent that he could smell alcohol on his breath and
17 body. Respondent claimed that he was okay to drive and again stated that he was the designated
18 driver. Officer 1 then administered a series of field sobriety tests (FSTs) to Respondent.
19 Respondent failed to perform the FSTs satisfactorily. Officer 1 administered the Preliminary
20 Alcohol Screening Device test to Respondent twice. The first test showed that Respondent had a
21 blood alcohol content of .097%, and the second test showed a blood alcohol content of .092%.
22 Based upon Respondent's objective signs of intoxication and his inability to perform the field
23 sobriety tests satisfactorily, Officer 1 determined that Respondent was driving under the influence
24 and was unable to safely operate a motor vehicle. Officer 1 further determined that Respondent's
25 further operation of a motor vehicle would be a hazard to Respondent, his passenger, and other
26 motorists. At approximately 3:30 a.m., Officer 1 arrested Respondent and transferred him to
27 Marin County Jail.
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1 FOURTH CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of Substantially Related Crime)

3 (Bus. & Prof. Code §§ 480(a)(1), 4300(c), 4301(l); Cal. Code Regs., tit. 16, § 1770)

4 19. Complainant realleges the allegations contained in paragraphs 15 through 18 above,
5 and incorporates them by reference as if fully set forth.

6 20. Respondent's application is subject to denial under Code section 480, subdivision
7 (a)(1), and section 4300, subdivision (c), as defined by section 4301, subdivision (l), and under
8 California Code of Regulations, title 16, section 1770, in that he was convicted of a crime
9 substantially related to the qualifications, functions, and duties of a licensee. The circumstances
10 are that on or about October 4, 2010, in a case entitled *The People of the State of California v.*
11 *James Poon, aka Tuan Ton Phan*, in the Marin County Superior Court, Case Number CR169098,
12 Respondent was found guilty after a jury trial and convicted of one count of violating California
13 Vehicle Code (CVC) section 23152, subdivision (a) (driving under the influence), a
14 misdemeanor, and one count of violating CVC 23152, subdivision (b) (driving while having a .08
15 percent or higher blood alcohol), a misdemeanor. Furthermore, on or about September 29, 2010,
16 in the above-entitled action, Respondent was convicted by guilty plea of violating CVC sections
17 23154, subdivision (a) (driving with a blood alcohol concentration of .01 percent or greater while
18 on probation for violation of vehicle code section 23153), an infraction, 22350 (unsafe speed for
19 prevailing conditions), an infraction, and 21658, subdivision (a) (unsafe lane change), an
20 infraction. On or about October 26, 2010, Respondent was sentenced to three years of probation
21 and 15 days in the custody of the Marin County Sheriff. Respondent was further ordered to pay
22 fines, fees, and restitution, complete 80 hours of community service, attend and complete a post-
23 conviction drinking driver program, submit to a blood, breath, or urine test if arrested for driving
24 under the influence in the future, and not drive with any amount of alcohol in his blood during the
25 probationary period.

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1. Denying the application of James Poon for a Registration as an Intern Pharmacist;
2. Taking such other and further action as deemed necessary and proper.

1/27/11

Virginia Herold

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